

Special Civil Application No 4641 of 1988

Date of decision: 08/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

LIMBA HARI TANTI

vs

COMPETENT AUTHORITY & DY. COLLECTOR (ULC) AND ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the  
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 10th September 1986 under sec. 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 10th May 1988 in Appeal No. Rajkot-176 of 1986 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.1 cancelled under sec. 21(2) of the Act the permission granted under sec. 21(1) of the Act by the order passed on 21st June 1982 with respect to an area of 14365.43 square meters from one parcel of land bearing survey No. 410 situated in Rajkot within its urban agglomeration.

2. It is not necessary to set out in detail the facts giving rise to this petition. It appears that one parcel of land bearing survey No. 410 situated in Rajkot within its urban agglomeration belonged to the predecessor-in-title of the petitioner. It appears that the deceased applied for permission under sec. 21(1) of the Act with respect to an area of 14365.43 square meters therefrom (the disputed land for convenience). By his order passed on 10th/21st June 1982, such permission came to be granted by respondent No. 1 on certain terms and conditions. One condition was to the effect that the construction on the disputed land was to commence within one year from the date of the order. It appears that no construction was commenced on the disputed land within one year from the date of the order. Thereupon respondent No. 1 issued one show-cause notice on 10th September 1985 calling upon the deceased why the permission under sec. 21(1) of the Act granted earlier should not be revoked in view of sec. 21(2) thereof. It appears that the deceased filed no reply thereto. Thereupon, by his order passed on 10th September 1986 under sec. 21(2) of the Act, respondent No.1 cancelled the permission granted under sec. 21(1) of the Act by the order passed on 10th/21st June 1982. A copy of the order passed by respondent No.1 on 10th September 1986 is at Annexure A to this petition. That aggrieved the land-holder. He carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-176 of 1986. A copy of the memo of appeal is at Annexure B to this petition. By the order passed on 10th May 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure C to this petition. It appears that the original land-holder breathed his last thereafter. The present petitioner as his heir and legal representative has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. The question whether or not the time-limit for commencement of construction can be imposed while granting permission under sec. 21(1) of the Act is no longer res integra. In its ruling in the case of Kanaiyalal Maneklal Sheth v. Competent Authority and Additional Collector (Ceiling), Rajkot and another reported in AIR 1994 Gujarat 130, this Court has held that no such condition as to the time-limit for commencement of the construction work can be imposed while granting permission under sec. 21(1) of the Act. This ruling of our Court is on all fours applicable in the present case. The permission granted earlier under sec. 21(1) of the Act came to be cancelled only on the ground that the construction work was not commenced within one year from the date of the order in terms of the necessary condition imposed in that regard while granting such permission. This could not have been done. The

impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure C to this petition cannot therefore be sustained in law. It has to be quashed and set aside.

4. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 10th September 1986 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 10th May 1988 in Appeal No. Rajkot-176 of 1986 at Annexure C to this petition is quashed and set aside. It would be open to the petitioner to start construction activity after complying with all formalities according to law pursuant to this decision after the writ in this case reaches respondent No.1 and he will have to complete the construction work within the balance period of 5 years starting from the date the writ in this case reaches respondent No. 1. It is clarified that the construction will have to be completed within the stipulated time-limit of 5 years from the date of the order passed on 10th/21st June 1982 after excluding therefrom the period from the date of receipt of the show-cause notice issued on 10th September 1985 till the writ in this case reaches respondent No. 1. It would be open to the petitioner to produce a certified copy of this judgment before respondent No. 1 for starting the construction activity. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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